

**Statement of Glenn Roger Delaney
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before the

**Subcommittee on Oceans and Fisheries
Committee on Commerce, Science and Transportation
United States Senate**

in the matter of

**Hearings on the Reauthorization of the Magnuson-Stevens Fishery
Conservation and Management Act and Implementation of the Sustainable
Fisheries Act**

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Madam Chair, Senators, ladies and gentlemen, as one of the three US Commissioners appointed by the President to ICCAT, I am grateful for the opportunity to provide testimony on the implementation of the Sustainable Fisheries Act with respect to Atlantic Highly Migratory Species of fish.

For the record, ICCAT is the International Commission for the Conservation of Atlantic Tunas which is a 27 member forum representing over 40 nations including the US. Its charge is to conduct research and to conserve and manage commercial and recreational fisheries for highly migratory species throughout the Atlantic Ocean. These include swordfish, the billfish species-- blue and white marlin, sailfish and spearfish, and the Atlantic tunas including: bluefin, bigeye, yellowfin, skipjack and albacore. ICCAT also collects important catch data on species of oceanic sharks such as blue, porbeagle, mako and thresher.

The Sustainable Fisheries Act was indeed a remarkable achievement by Congress and this Committee in particular. It was perhaps the most comprehensive review and revision of the Act ever accomplished. Nevertheless, due in part to our experience with the implementation of the SFA to date, and due in other part to the fundamental reality that fisheries research, conservation and management are forever dynamic, still further revisions will be necessary. This certainly holds true for the highly migratory species policy and provisions of the Act and so I am very pleased to have this considered as part

of the process.

Given that my time is very brief, I would like to make some very simple points: that highly migratory species are very important; that highly migratory species biology and fisheries are very unique; and, because of this, highly migratory species must continue to be treated in the Act in a manner that is very distinct from those fisheries under Regional Council authority. In fact, I believe those distinctions need to be further clarified and strengthened.

First, I would like to present a few facts from the NMFS socio-economic data regarding the economic importance of these fisheries.

- By my own estimates commercial fisheries for Atlantic highly migratory species have an ex-vessel value of about \$100 million involving over 10,000 vessels from Maine to Texas. This accounts for about 5% of the ex-vessel value of total US catch of all finfish species and is comparable in value, for example, to the total value of the New England Sea Scallop fishery as well as to the Atlantic and Gulf of Mexico menhaden fishery, one of the largest volume fisheries in the US.
- NMFS has literally issued 20,194 permits to US commercial and recreational fishermen just to fish for bluefin tuna, and this fishery has provided an important alternative source of income to the currently depressed New England groundfish economy.
- There are nearly 400 permitted US pelagic longline vessels with over 1,400 crew members supporting about 3,500 shoreside jobs, and NMFS has issued permits to over 200 U.S. dealers just to handle their \$19 million (ex-vessel) swordfish catch.
- NMFS estimates U.S. recreational fishermen spend 100,000 fishing trips per year targeting these large pelagic fish. Billfish tournament anglers alone spend nearly \$200 million each year which equates to about \$4,000 per billfish caught.
- Fresh Atlantic swordfish and tuna are among the most expensive seafood dishes in the most expensive restaurants in America. At times, the best quality US-caught Atlantic bluefin tuna have sold for over \$25,000 at the Tsukiji fish market in Tokyo.

As I stated, HMS are also very different—their biology is different and their fisheries are different. In terms of biology:

- Bluefin tuna have been documented to make a 4,200-nautical mile trans-Atlantic migration in a few as 50 days and those tagged this summer off Maine and Massachusetts by Dr. Molly Lutcavage of the New England Aquarium will likely show up off Iceland, in the Sargasso Sea, or in the Mediterranean.
- Although everyone knows fish are cold blooded, bluefin tuna are actually able to

regulate their body temperatures as much as 10 degrees above the water temperature. This adaptation has allowed this species to extend its range far beyond that of tropical and semi-tropical tunas.

- Swordfish are virtually ubiquitous in the North and South Atlantic Ocean, migrating vast distances as they follow currents and temperature gradients. And, unlike nearly all other US fishery resources, highly migratory species are the apex predators of the marine ecosystem. They tend to be long lived and reproduce at a relatively late age.

In terms of the fisheries:

- Compared to most other US fisheries, which occur nearshore and well within the US EEZ, some HMS fisheries are among the most distant water of all. Some of you may have come to appreciate just how distant after reading the recent best-seller “The Perfect Storm”.
- US Atlantic swordfishermen may travel 8 or more days in relatively small vessels just to reach their fishing grounds where they then have to compete side-by-side with fishing ships from 20 or more nations all fishing on the same stocks. If and when they make it back home, our swordfishermen then have to compete with the 80 nations that export swordfish to the US market.
- Finally, although these fisheries are very important to the US in terms of our fisheries economy and recreation, the total US catch of all ICCAT-managed species represents less than 5 % of the total harvest of these species by all ICCAT fishing nations.

This is perhaps the most critical difference because it means that, unlike nearly all other U.S. fish stocks, the U.S. cannot conserve, manage or rebuild any Atlantic highly migratory species unilaterally. Instead, U.S. policy recognizes that effective conservation and management of these species can only be achieved on a multilateral cooperative basis throughout their range.

Based on this policy and our experience with the implementation of the SFA, I believe there needs to be an even clearer and stronger link made in the Act between our international policy objectives for HMS and the resulting domestic implementation. I will provide two specific examples.

First, as you will recall Madam Chair, there had been an extensive debate with NMFS as to the proper interpretation of the section 304(e) rebuilding provisions as they related to HMS. Thanks to the interpretations provided by you, Senator Breaux and other members of this Committee, we have thus far prevented the ‘tail from wagging the dog’ in terms of having domestic fishery management plans preempt and dictate U.S. international policy at ICCAT. Still, I believe this reauthorization process provides an opportunity we should take to clarify your intent in the statute as so well stated in your and Senator Breaux’s

January 28, 1998, letter to Terry Garcia, and I quote: “Finally, the law makes clear that U.S. regulatory measures, including rebuilding schedules, for fisheries managed under an international agreement to which the United States is a party must be consistent with the recommendations or regulatory measures adopted under the agreement.”

This policy also needs to be strengthened in section 304(g), which includes the fishery management plan development provisions that are specific to highly migratory species. In that subsection, I believe a stronger linkage of plan development to what I will call ‘Commissioner intent’ is needed.

I draw the analogy to the notion of Congressional intent in legislative history to which the Administration rightly looks when promulgating plans and regulations to implement fishery legislation. Though not binding, it provides critical guidance to the agency. However, when NMFS promulgates fishery management plans and regulations to implement our obligations under ICCAT agreements, there is no analogy to such legislative history that documents ‘Commissioner intent’.

Why is this a problem? When I go to ICCAT as a Commissioner I believe I have two fundamental responsibilities: (1) to protect the resource, and (2) to protect the interests and maximize the benefits to U.S. fishermen. Both are weighty responsibilities that all the Commissioners take every seriously.

When we make proposals and negotiate with other nations at ICCAT, and enter the United States into international conservation obligations, it is always with the best interests of US fishermen, both commercial and recreational, in the forefront of our minds. What and how we negotiate depends heavily on our having a reasonably strong degree of confidence as to how a particular conservation measure will be implemented by the US, how it will be applied to the various US fishery sectors and, thus, how it will affect the lives and families of US fishermen back home.

Unfortunately, domestic implementation of our ICCAT conservation obligations has not always reflected the express intent of the Commissioners on some key issues. This makes me very uncomfortable. Not knowing what effect our negotiations and agreements will have on US fishermen and their coastal communities seriously undermines our role as Commissioners. Ultimately, I think it will limit our ability to be the aggressive conservation leaders at ICCAT we have been in recent years. I think it has also led unnecessarily to some of the costly litigation now facing the agency.

Of course, this is not to suggest that the Commissioners should be in a position to preempt the policies of the Act or the usual prerogatives of NMFS. However, if there is specific Commissioner intent associated with a particular ICCAT obligation, and that intent is not inconsistent with the policies and provisions of the Act, then I believe the Act should ensure that such intent is ultimately reflected in the relevant plans and regulations. I would be grateful for the opportunity to work with the Committee to develop an

appropriate process to address this concern.

Finally, I would like to briefly raise some further issues for your consideration regarding provisions of the Act as they relate to Atlantic highly migratory species.

(1) National Standard 1 and the definitions of ‘overfished’ and ‘overfishing’.

I think the use of MSY as a goal is as useful as any of the reference points regarding the condition of a fish stock. However, I think the Act could reflect a better understanding of what it is, what the underlying assumptions are, and what its limitations are. I think there is a generally held misconception that any fishery that is not continuously producing the maximum sustainable yield is somehow in imminent danger of collapse. As a result, I think the Act is fairly conservative in its application of this concept.

This issue relates to the definitions of ‘overfishing’ and ‘overfished’. I don’t think these two terms should be used in the same definition. I think it is appropriate to use MSY as a reference point to define a fishery as ‘overfished’ with the meaning that the stock is not producing the greatest yield it could and that our goal should be to gain the greatest yield, in terms of fishing mortality, that we can from a fish stock. But, this has more to do with maximizing the benefits of a fishery resource to the US than it does to the actual protection of a fish stock from decline.

In my view, the concept of ‘overfishing’ relates more to the issue of sustainability. Fisheries can be perfectly sustainable at yields that are less than the maximum so long as there is an equilibrium between the stock inputs of recruitment and growth, and the stock outputs; natural and fishing mortalities. In my view, overfishing is not occurring if the level of fishing mortality is sustainable—meaning that fishing and natural mortality are in equilibrium with the sum of growth and recruitment. There is no decline of the stock under that circumstance. The definition of overfishing should reflect a fishing mortality rate that when combined with the natural mortality rate is not in equilibrium with growth and recruitment and, as a result, is causing the stock to decline by weight or numbers of fish.

I would note there is probably some low level of stock biomass that represents a critical level below which a stock might collapse because the reproductive potential has been reduced too far. But, above such a threshold, I think it might be worth reevaluating how we define these terms and how we apply them as either absolute standards or goals.

Finally, I would note that a fundamental assumption of MSY is that environmental parameters are constant. As we know from fishery science, however, physical parameters such as temperature, salinity, sunlight, nutrients, and currents in estuarine, coastal, demersal and pelagic environments have perhaps the most profound effect on recruitment,

growth and natural mortality.

Why this can be a problem is that MSY is sometimes based on historical data on fisheries during times when environmental parameters were almost certainly different than they are today. As a result, it may not even be possible today for a stock to achieve an MSY calculated from data on a fishery 20 or 30 years ago-- even at a fishing mortality level of zero. My suspicion is that this may be the situation we face with western Atlantic bluefin tuna.

In a similar line of thought, I think it is also unclear within the field of fishery population dynamics whether the individual species of a given fishery ecosystem can all achieve the species-specific MSY simultaneously. When codfish and haddock stocks are low, we can predict a relatively high MSY for dogfish. But if those stocks rebound, can we expect to achieve the same MSY for dogfish while simultaneously achieving high yields of codfish and haddock ? Probably not.

Again, the stringency the Act holds itself to MSY should be considered. The point in time at which an MSY for a stock is determined relates heavily to the complex relationship between prevailing environmental parameters and ecosystem dynamics. As such, should it be an absolute standard, or should it be a general goal ? And, should the Act consider a fishery's sustainability in addition to whether it is producing the absolute maximum sustainable yield in weight or numbers of fish ?

(2) National Standard 2.

The best available science for highly migratory species is inadequate. For example, for the past 16 years, ICCAT has managed the bluefin tuna as two separate stocks based in part on the premise that one of these two stocks spawns exclusively in the Mediterranean and the other in the Gulf of Mexico. Now the US is tagging fish of spawning age and size that are frequenting vast areas of the central Atlantic/Sargasso Sea areas at the very same time our science tells us they should be spawning.

Sixteen years of managing the species based on fundamentally incorrect assumptions may well have caused significant but unknown economic harm to US fishermen and may have seriously compromised our ability to effectively manage this species. The bottom line is we need more science. We need more dollars for science. Satellite pop-up archival tagging is a good start and this needs to be substantially expanded for many ICCAT species.

Finally, the General Accounting Office is currently performing a comprehensive study on NMFS implementation of this national standard. A careful review of the results of this study when available may provide important guidance to the Committee for further revisions to the statute in this context.

(3) National Standard 8.

Socio-economic data on US fisheries is generally inadequate to support proper implementation of this new national standard. The situation with respect to Atlantic highly migratory species is certainly no exception. A greater commitment of agency resources to the collection and proper analysis of socioeconomic data is needed. Proper application of the requirements of the Regulatory Flexibility Act would also help to satisfy the requirements of this national standard.

The General Accounting Office is currently performing a comprehensive study on NMFS implementation of this national standard as well. A careful review of the results of this study when available may also provide important guidance to the Committee for further revisions to the statute in this context.

(4) National Standard 9.

This standard requires fishery management plans to minimize bycatch to the extent practicable. Bycatch is a tough issue for highly migratory species fisheries—both commercial and recreational. However, please be aware that much of the US bycatch of highly migratory species is ‘regulatory’ bycatch— meaning fish that are required by NMFS regulation to be discarded by US fishermen. I believe this approach needs to be seriously reevaluated. Does it make sense to first require a fisherman to discard certain fish and then subsequently to establish bycatch reduction requirements on those same regulatory discards ? I believe it is only logical that a national standard policy that requires minimization of bycatch should preclude the widespread use by the agency of regulatory discard requirements to achieve conservation goals. More creative management is needed.

(5) Section 304(g) Highly Migratory Species Advisory Panels.

This section requires the Secretary to establish for each highly migratory species fishery management plan an advisory panel under section 302(g). Section 302(g)(4) requires each such advisory panel to “be balanced in its representation of commercial, recreational, and other interests”. NMFS has established two such advisory panels; one for ‘Atlantic highly migratory species’ and one for ‘Atlantic billfish’. Two issues need to be considered. First, whether the appointment of only one commercial fishing representative to the billfish advisory panel meets the statutory test for “balanced”. The second issue relates to the fact that, although this is not set forth in the statute, NMFS often combines these two panels for meetings to secure input on both plans. The net result of this combination is a very different “balance” of interests than that of the two advisory panels held separately. Again, it is unclear if such combined meetings and the procedures thereof meet the statutory test for “balanced”.

Thank you again for this opportunity to present my views. I look forward to working with the Committee on these and other important issues. I would be happy to respond to any questions at this time.